

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0382P**

Adjusted Gross Income Tax  
Fiscal Year Ended 02-28-95

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2  
Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, incorporated out of state in 1982 was audited for fiscal year 1995. Upon audit it was discovered that the taxpayer failed to include real estate sales in gross income at the high rate of income. It had included the sale in low rate.

I. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer was assessed a negligence penalty because it failed to include in high rate income the sale of its real estate. Taxpayer, however, did include the sale in low rate income. Taxpayer correctly included its other income in gross income.

The department finds that the taxpayer was not negligent in reporting its income. Taxpayer was never audited by the state of Indiana, has no business locations in the state, and reported all of its receipts although a portion was at the wrong rate.

Taxpayer has provided evidence that the penalty should be waived.

**FINDING**

Taxpayer's protest is sustained.